

BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

CHRIS REA,

Appellant,

vs.

SOUTH PUGET SOUND COMMUNITY
COLLEGE,

Respondent.

CASE NO. R-RULE-08-002

ORDER OF THE BOARD
FOLLOWING HEARING ON
EXCEPTIONS TO THE
DETERMINATION OF THE DIRECTOR

Consideration of Exceptions. This appeal came before the Personnel Resources Board, JOE PINZONE, Vice Chair, and LAURA ANDERSON, Member, on Appellant's exceptions to the director's determination dated August 5, 2008. This matter was considered based on the record and the written submissions of the parties.

Representation. Appellant Chris Rea represented herself. Respondent South Puget Sound Community College (SPSCC) was represented by Franklin Plaistowe, Assistant Attorney General.

Background. Appellant was employed in a temporary part-time hourly position at the SPSCC library. Appellant's original hire date was September 9, 2002.

WAC 357-19-450 provides:

For individuals in higher education temporary appointments under the provisions of WAC 357-19-435(1), the director may take remedial action to confer permanent status, set base salary, and establish seniority when it is determined that the following conditions exist:

(1) The employee has worked in one or more positions for more than one thousand fifty hours in any twelve consecutive month period since the original hire date or October 1, 1989, whichever is later. (Overtime and time worked as a student employee under the provisions of WAC 357-04-040 are not counted in the one thousand fifty hours.)

(2) The position or positions are subject to civil service.

(3) The employee has not taken part in any willful failure to comply with these rules.

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2 In April 2008, Appellant thought she was nearing the 1050 hour limit for temporary employment.
3 She alerted her supervisors and then contacted the Department of Personnel (DOP) Rules Unit for
4 an interpretation of WAC 357-19-450.

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6 The DOP rules staff informed Appellant, in part that “[t]he 1050 hour limit is for any twelve
7 month period. If you have worked more than 1050 hours in any consecutive twelve month period
8 since your original hire date then you would be the one to request a director’s review of your
9 requests for remedial action” The rules staff did not place emphasis on the language
10 pertaining to the original hire date. After receiving the information from DOP’s rules staff,
11 Appellant consulted with a co-worker, her immediate supervisor, and the Dean of the library.
12 They agreed that based on the response from DOP rules staff, Appellant should file a request for
13 review.

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15 On May 19, 2008, the Department of Personnel received Appellant’s request for a director’s
16 review. In her request for review, Appellant alleged that she had worked more than 1050 hours
17 between May 1, 2007 and April 30, 2008, and was therefore entitled to permanent status.

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19 The director’s designee determined that in accordance with WAC 357-19-450(1), for purposes of
20 remedial action, Appellant’s first twelve consecutive month period was from September 9, 2002
21 (her original date of hire) through September 8, 2003. The next twelve consecutive month period
22 ran from September 9, 2003 through September 8, 2004, and the pattern continued. The designee
23 determined that at the time of Appellant’s May 19, 2008, request for review, the relevant twelve
24 consecutive month period would have been September 9, 2007 through September 8, 2008. The
25 designee concluded that during the relevant time period, the hours Appellant worked did not
26 exceed 1050. Therefore, she did not qualify for remedial action. By letter dated August 5, 2008,
27 the director’s designee denied Appellant’s request for remedial action.
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1 On September 3, 2008, Appellant filed exceptions to director's determination. Appellant's exceptions
2 are the subject of this proceeding.

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4 **Summary of Appellant's Arguments.** Appellant explains that she had been continuously employed
5 by SPSCC as a "permatemp" since September 9, 2002. She argues that based on the advice she
6 received from the DOP rules unit, any twelve consecutive month period since her original date of hire
7 should be considered when determining whether she qualified for remedial action. She contends that
8 between May 1, 2007, and April 30, 2008, she worked more than 1050 hours. Appellant asserts that
9 because she worked over 1050 hours in any twelve consecutive month period, she should be granted
10 remedial action.

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12 **Summary of Respondent's Arguments.** Respondent argues that the Board should dismiss
13 Appellant's appeal and affirm the director's determination. Respondent contends that formal DOP
14 opinions and decisions by the Personnel Appeals Board (PAB) have consistently interpreted the
15 language used in WAC 357-19-450 in a manner consistent with the director's decision in this case.
16 Respondent argues that the rules of statutory construction call for interpreting WAC 357-19-450 to
17 mean that the number of hours worked by a temporary employee should be counted in twelve month
18 periods from the original date of hire. Respondent contends that applying the interpretation advanced
19 by Appellant would render portions of the rule meaningless. Respondent asserts that if DOP intended
20 to change how the language of the rule was to be interpreted, it could have done so when the rule was
21 revisited in 2005. Respondent further asserts that a departure from the long standing interpretation of
22 the rule would be a significant hardship on institutions of higher education. Respondent argues that the
23 director's designee correctly concluded that Appellant is not entitled to permanent status and that the
24 appeal should be dismissed.

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26 **Primary Issue.** Whether the director's determination denying Appellant's request for remedial action
27 should be affirmed.
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1 **Decision of the Board.** The Personnel Resources Board has jurisdiction over the parties hereto
2 and the subject matter herein. The question in this appeal is whether Appellant worked more than
3 1050 hours in any twelve month period since her original date of hire.

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5 Based on precedent of the Personnel Appeals Board (predecessor to this Board), DOP formal
6 opinions, and the historical interpretation and application of the language in WAC 357-19-450,
7 remedial action is based on the hours worked during any twelve consecutive month period, on an
8 annualized basis, from the original date of hire. Appellant alleges that she exceeded the 1050 hour
9 threshold between May 1, 2007 and April 30, 2008. However, based on Appellant's original date
10 of hire, the May through April time period spans two separate annualized twelve month periods.
11 The relevant period of time for this appeal is September 9, 2007 through May 19, 2008. During
12 this period, Appellant did not exceed the 1050 hour threshold. Therefore, her appeal should be
13 denied.

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15 **ORDER**

16 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal on exceptions by Chris Rea is
17 denied and the Director's determination dated August 5, 2008, is affirmed and adopted.

18 DATED this ____ day of _____, 2009.

19
20 WASHINGTON PERSONNEL RESOURCES BOARD

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JOE PINZONE, Vice Chair

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LAURA ANDERSON, Member